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MURDERING THE SPIRIT: RACISM, RIGHTS, AND COMMERCE

Robin West*

THE ALCHEMY OF RACE AND RIGHTS: THE DIARY OF A LAW PROFESSOR. By *Patricia L. Williams*. Cambridge: Harvard University Press. 1991. Pp. 263. Cloth, \$24.95; paper, \$10.95.

Patricia Williams' *The Alchemy of Race and Rights: The Diary of a Law Professor*,¹ is an eloquent, profoundly original, and often brilliant collection of interdisciplinary essays and stories concerning the impact of racism and poverty on the human spirit; the historic and continuing role of law and legal institutions in defining, facilitating, and perpetuating those harms; and the possibilities and dangers imminent in the attempt to use law to effect a remedy for them. This is a book that we should celebrate: it reminds us that books are occasionally very, very important, that reading can be transformative, and that writing sometimes can be and should always strive to be a moral act of the highest order.

In the first Part of this review,² I will briefly discuss just three of the substantive and disciplinary accomplishments of this book, and then I will present two possible objections (and possible responses) to some of the implicit and explicit theses the book defends. It is my view, however, that the greatness of this book lies neither in its disciplinary breakthroughs nor in its explicit analysis of race and law. The book's importance and uniqueness is in what it *shows* about the nature of private racism, which Williams provocatively calls a form of "spirit-murder" (p. 73) — the generic "disregard for others whose lives qualitatively depend on our regard."³ Much of Williams' book is given over to rich personal depictions of both the nature of the *act* of spirit murder thus defined and, more importantly, perhaps, the nature of the *injury* its victims experience. Thus, in the second and major Part of this review,⁴ I will try to describe "spirit-murder," the depiction of

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1. Patricia Williams is Professor of Law, University of Wisconsin.

2. See *infra* notes 6-18 and accompanying text.

3. P. 73. Williams does not limit "spirit murder" to racism. Rather, "cultural obliteration, prostitution, abandonment of the elderly and the homeless, and genocide are some of its other guises." P. 73.

4. See *infra* notes 19-20 and accompanying text.

which I take to be the heart of Williams' contribution to our modern understanding of race relations in this country.

In the concluding Part,⁵ I will review the two possible legal paths toward compensating or correcting the multiple injuries of spirit-murder that Williams describes. The first, toward which Williams is deeply ambivalent, consists in the related worlds of commerce and contract. If spirit-murder is, in its legal sense, that injury that results from being the "object" rather than the subject of property, contract, and commerce, — a legal "disregard" felt most dramatically by the slave — then inclusion as subjects rather than objects in the world of commerce might be thought an adequate remedy. The promise, however, that the injuries sustained from the legacy of slavery would be eradicated simply through the legally mandated inclusion of African Americans in this country's commerce has turned out to be at least somewhat illusory. Consequently, both commerce and the law of commercial relations play a pivotal but deeply ambiguous role in Williams' book. The second route of recovery, about which Williams is less equivocal and far more hopeful, is through an expansive and avowedly utopian conception of rights.

I. ON VOICE, RIGHTS, AND METHOD

The Alchemy of Race and Rights makes at least three significant contributions to contemporary legal academic debates, the first of which is stylistic, the second substantive, and the third philosophic. First, as even the most casual reader will quickly see, Williams employs in this collection of essays a writing style — heretofore unseen in traditional legal writing — that combines narrative, journalism, literary criticism, and traditional legal analysis in order to convey the complexities of both the meaning of law and the lived reality of racism. This methodological fusion of the "objective" methods of journalistic, sociological, and legal analysis with the "subjective" or interpretive methods of parable, myth, and storytelling not only breaks down interdisciplinary barriers between traditionally distinct fields of learning and scholarship, but more fundamentally challenges the reader's understanding of the familiar definitional boundaries between objective and subjective on the one hand and analysis and narrative on the other. Although certainly not the first to blend the subjective and objective voices, or to employ narrative in conjunction with traditional analysis,⁶ Williams may well be the first to do so with such breathtak-

5. See *infra* Conclusion.

6. For a general introduction to what is now at times called "narrative jurisprudence," see Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989). For an insightful discussion of this literature, see Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991). For a critical analysis, see Mark V. Tushnet, *The Degradation of Constitutional Discourse* (1992) (unpublished manuscript on file with author).

ing effect. The joint reliance on first-person narrative, third-person journalistic reporting, traditional legal analysis, and myth and parable simultaneously conveys a picture of the worlds of race and class relations and a powerful and convincing argument for changing them, in ways that would most likely not be possible were any of these literary methods employed in isolation.

Its stylistic pluralism is perhaps the most strikingly original aspect of this book for readers approaching Williams' writing for the first time. In terms of the canons and disciplining rules of legal scholarship, Williams' stylistic choices are the most "radical" aspect of her book. Yet her success with this method of legal writing has gone a long way toward rendering it noncontroversial: Williams' writing is widely and I believe correctly credited with having at least legitimated, if not initiated, a far greater range of prose style for academic legal writing.⁷ The use of narrative, the insistence on acknowledgement of authorial perspective, and the blending of interpretation and objective analysis that is now more or less characteristic of both critical race theory and feminist legal theory writing owes a substantial debt to the groundbreaking success of Williams' writing.⁸ There's an ironic double edge to this sword: the grace and power of her prose no doubt sets an intimidating standard of performance that is well-nigh impossible to meet for other participants in the genre of narrative jurisprudence that she has largely created. But more importantly, the sheer excellence and beauty of Williams' style, and her demonstrated ability to meld methods, makes a convincing case for the importance of establishing and hearing the author's perspective, voice, and experience, and for the communicative and purely argumentative advantages of doing so.

The book's second contribution is substantive. Williams combines a critique and a reconceptualization of the liberal "rights" tradition that challenges our understanding of both the potentials and the limits of such rights as a vehicle for social justice in this society. Like many of its critics, Williams laments that while the liberal rights tradition guarantees a panoply of "negative" speech, privacy, and property rights, it does not guarantee "positive" rights to clothing, shelter, food, employment, or income.⁹ As a result, when those needs are unmet — with consequences surely as devastating for human autonomy, citizenship, and liberty as deprivations of protected rights — there is no legal basis for constitutional challenge. As I will discuss in some-

7. See generally Abrams, *supra* note 6, at 1003-04; Tushnet, *supra* note 6, at 17.

8. The connection between critical race theory and narrative methodology is made explicit in Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

9. This is one of the major themes of the chapter entitled "Gilded Lilies and Liberal Guilt." Pp. 15-43.

what more detail at the end of this essay, however,¹⁰ Williams also reminds us of the tremendous life-affirming and spirit-enriching role that even negative rights and their acquisition have played in the history of race relations in this country, and of the unspeakable danger and horror of living in a social world of "rightslessness" that was the heart of slavery.¹¹ Her insistence on both the affirming role of rights and the shared cultural memory of the terror of rightslessness — still very much a part of contemporary African-American life — moves her to an eloquent refutation of the global denunciation of rights, sometimes called the "rights critique," put forward in the early 1980s by the critical legal studies movement.¹² She then articulates a reconception of rights, the aim of which is to liberate the idea of rights from its historic association in liberal societies with oppressive property regimes and miserly conceptions of personal privacy.¹³ Rather than turn our backs on rights, Williams argues, we need to "see through or past them so that they reflect a larger definition of privacy and property: so that privacy is turned from exclusion based on self-regard into regard for another's fragile, mysterious autonomy; and so that property regains its ancient connotation of being a reflection of the universal self" (p. 164). The animating utopian regime of rights that Williams envisions is undeniably far from the extant system of rights enforced and exalted by the liberal rights tradition. But it nevertheless has roots in historical experience and resonates with the hopes and memories of African Americans — roots that both the liberal understanding of rights and the CLS critique of rights ignore.

Williams' exploration of her ambivalence toward both the limits of extant liberal rights and the critical legal studies rights critique has already profoundly affected the substance of legal scholarship concerning race relations. Its impact at least equals that of her methodological breakthroughs on the style of such scholarship. The essay defending "rights," and the rights tradition generally, against the CLS critique, which appears in Williams' eighth chapter, entitled "The Pain of Word Bondage," initially appeared in the 1987 edition of the

10. See *infra* Conclusion.

11. This theme runs throughout the book, but see especially "The Pain of Word Bondage" (p. 146) and "On Being the Object of Property" (p. 216).

12. According to the proponents of the rights critique, even granting their occasional progressivity, liberal "rights" inevitably legitimate the status quo, are regressively tied to property regimes, and serve to alienate the individual from the society against which his rights not only protect him but more significantly isolate him. Liberal rights privatize what should be public responsibilities and are generally, in Mark Tushnet's provocative phrase, harmful to the "party of humanity." Mark Tushnet, *An Essay on Rights*, 62 TEXAS L. REV. 1363, 1364 (1984). For an introduction to the CLS critique of rights, see generally Alan D. Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978); Symposium, *A Critique of Rights*, 62 TEXAS L. REV. 1363 (1984).

13. Pp. 146-65 ("The Pain of Word Bondage").

Harvard Civil Rights and Civil Liberties Law Review. In conjunction with several other essays in that volume,¹⁴ Williams' essay criticizing the rights critique from the perspective of African Americans inaugurated onto the legal academic scene the critical race theory movement, the animating purpose of which is to use the apparatus of critical social theory to make sense of modern race relations and the law that governs, reflects, and interacts with it. That movement is unified by a number of common themes, most of which were alluded to in Williams' original essay, but which are developed with much greater elaboration in this volume: that the history of race and race relations creates a dynamic of domination and subordination between white and black that is not assimilable to the dynamic of domination that characterizes class relations; that even granting extraordinary diversity among African Americans, their shared history and, to some extent, shared experience make it possible at least tentatively to lay claim to an African-American perspective on modern social life that differs significantly not only from that of the mainstream but of other subordinated groups as well; and that this perspective has been systematically excluded from dominant culture, the processes, and hence the content of modern law and legal consciousness. This book can and should be read as a product and, indeed, a constitutive text of that movement, but it can also serve as an introduction to and defense of most of its major themes. Thus, one of the accomplishments of this book is simply that it provides an accessible, intimate, and beautifully written articulation of the major claims of the critical race theory movement. It is not only clear and concise where it needs to be, but is also both passionate and compassionate, often very sad, but occasionally quite funny, and always a pleasure to read and reread.

As important and indeed pivotal as Williams' "critique of the rights critique" has been for the establishment of critical race theory, it threatens to overshadow the contribution that Williams' understanding of rights could make to mainstream liberal rights analysis as well. Too often, I fear, Williams' defense of rights against the rights critique is taken by readers (I know this is true of students, and I sense it is also true of many law professors as well) as a defense of liberal rights as they presently exist — overwhelmingly negative, liberal in content, atomistic, and individualized. This book definitively belies that limitation. Williams conceives of rights — again, meaning either negative or positive — as being, in their most ideal form, *enlivening*, or animating, or enriching — whether they be such because they "negatively" *protect* the rightholder against abusive state action, the deadly

14. See *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987). In addition to these essays, see also Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

apathy of an uncaring community, or the murderous or hateful lashing out of cocitizens, or because they "positively" entitle their holder to minimal welfare against an ungiving society or state. Both sorts of rights have value because and when they ensure a relationship of what I would call loving respect between the rights holder and the larger community of which that holder is a part. Both sorts of rights convey that which gives value to life: the respect, distance, and grant of privacy entailed by a regard for the other's equal dignity and status; and the inclusion in the community, safety, common concern, care, and destiny that is entailed by a regard of the other's humanity.

While spirit-murder — private racism and more particularly the experience of racism — is unquestionably the dominant theme of this book, this utopian conception or reconceptualization of rights as the most promising antidote is its constant subtext. That conception, I believe, is a profoundly original, perhaps paradigm-shifting reinterpretation of the rights tradition. It is an attempt to articulate through description, rather than assertion, argument, or definition, the common thread of "regard" for the individual's needs that constitutes rights — the denial of such regard is spirit-murder, and its affirmance, the grant of a right. The set of needs to be "regarded" includes *both* the negative needs for privacy, distance, and acknowledgement of individuating differences associated with liberalism, and the positive needs for inclusion, protection, safety, nurturance, and acceptance associated with the progressive tradition. Williams shows the grant of these rights to be not only a part of a continuum, but as being, again in their idealized or utopian form, expressive of the same human instinct — an instinct for "spirit-affirmation," an instinct that is both giving and respectful. The respect and dignity that motivates the grant of a negative right does or at least should imply the communitarian and inclusive impulse to protect and nurture, through positive rights if necessary, while the love or fraternity or sense of shared fate that lies behind the progressive impulse to grant positive rights ought correlatively to imply the degree of respect and dignity protected through the negative concepts of privacy and insularity. If that basic insight is right, then a lot of traditional liberal theory — with its insistence on the antithesis of negative and positive rights, on their historical opposition, and on the inevitable threat posed to the former should the latter be granted — is simply wrong. And if so, then in addition to ushering the critical race theory movement onto the legal scene, Williams' conception of the nature of rights should fundamentally change what we think of when we think of almost any type of rights — whether they be civil rights, commercial rights, property and contract rights, animal rights, or, more generally, rights of the spirit.

The third accomplishment of this book is philosophical. Williams, I think uniquely in contemporary legal scholarship, combines a deep and in some ways postmodern appreciation of the extent to which

class, race, gender, life experience, and culture shape our perceptions with a fierce commitment to the classical and enlightenment goals of truth and justice. Part of this book's power and uniqueness is simply that it makes us see that these "enlightenment" goals are not incompatible with acknowledgement of perspective, as in some way contended by both postmodernists and their traditionalist rivals, but rather that attainment of these goals requires such recognition. The success of Williams' blending of narrative and analysis rests, I believe, on the fundamental soundness of its underlying philosophical position: both that one's race, gender, class, and life experience are central to one's perception and, consequently, that the quality of our understanding of or even search for truth depends on our conscious awareness of those filters, no less than our endless capacity for self-deception and inauthenticity rests on our refusal to acknowledge their existence. At the same time, however, Williams is firmly and indeed fiercely committed to both the enlightenment promise of the liberatory effect of truth and the humanistic project of protecting, regarding, and valuing the authentic individual self. Ultimately, Williams extensively uses first- and third-person narratives not to deliver a postmodern denunciation of the classical conception of truth, but to testify to it. Likewise, she insists on the centrality of perspective not to undermine humanistic regard for the self, but to strengthen it. This combination of an appreciation of perspectivity — declared in unequivocal terms in the book's opening sentence¹⁵ — with the classical scholar's passion for truth, the advocate's passion for social justice, and the humanist's regard for the individual accounts, I believe, for the forceful directness of Williams' prose. Her writing moves the reader by telling us something true about the world, seen from Williams' explicitly declared perspective. This qualification deepens rather than diminishes the importance of the truth she explores.

All of these methodological, substantive, and philosophical themes — the melding of objective and interpretive method and analytic and subjective voice; the articulation of a distinctly postliberal and utopian understanding of rights that can ground both a defense of rights against left-wing critique and against right-wing cooptation; and the insistence on perspective as a vehicle rather than replacement for the attainment of truth — are tremendously important. None, of course, is problem-free. Let me mention two possible objections to Williams' work, one that goes to the pluralist method she employs, and one that goes to the defense of rights, and explain quickly why I think they fail. If my treatment of those objections and responses here seems cursory, this is primarily because, as discussed above, I believe that the great triumph of this book — the primary reason its publication is an event

15. "Since subject position is everything in my analysis of the law, you deserve to know that it's a bad morning. I am very depressed." P. 3.

worthy of unqualified celebration — lies quite apart from its contributions to the debates now raging in academic legal circles, and indeed is of an entirely different order of magnitude than any contribution to those debates could conceivably be.

The first such objection is simply that the defense of rights against the “critique of rights” from the critical legal studies movement is at best inconclusive, in ways naive in its uncritical endorsement of rights, and at worst harmful to the “party of humanity.” The objection might go something as follows. Williams (and others) may be right to insist upon the transformative and beneficial effects of civil rights for the experiences of African Americans, but that very experience simply underscores the problem. As the critics insist, liberal rights, formal equality, and negative guarantees of privacy against excessive state intrusion are simply the sugar coatings that make the pill of continuing race-based economic, material, and social subordination both easier to swallow for African Americans and other subordinated groups, and easier to justify for privileged whites. Further, the attempt made by Williams to articulate a utopian conception of rights by radically disassociating them from the sorts of propertied regimes she rightly denounces — ranging from the institution of slavery itself (pp. 17-19, 217-23) through the modern use of property rights to justify the slaughter of animals (pp. 181-82), the forced separation of surrogate mothers from their children against their will (pp. 224-26), the desire to exclude blacks from white neighborhoods and the presumption of guilt accompanying the presence of blacks in such neighborhoods (pp. 59-79), or the explicit exclusion by white store owners of blacks from their premises (pp. 44-45) — is ahistorical and even antihistorical. In this country rights have always been inextricably forged to property and its justification; there is simply no ground for hoping that such a linkage might weaken in the future. Even granting that rights have from time to time served progressive ends, their chief end and *raison d’être* has been to provide both the psychological and legal justification, or “space,” for the rightholder to dominate, objectify, own, exclude, outwit, or diminish the “other” or others who either *constitute* the property, the object of the right, or are profoundly affected by it. Rights, in short, permit their holder to ignore or denigrate the humanity of those against whom the right is held, and to aggravate and perpetuate, and, in more than a few cases, literally to cause, their very real and unacknowledged human need.

Thus, virtually all of the tragedies and injustices Williams decries can be understood not as failures of rights but as excesses of rights. Slavery, most dramatically, is simply the structural name for the cluster of property rights granted the slave owner over the slave,¹⁶ but

16. Indeed, in an ironic congruence of right- and left-wing critique, Robert Bork has argued that the most infamous case in constitutional law, *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393

spirit-murder — Williams' appellation for private racism — is nothing more than only one of several pernicious consequences that inevitably follow when individual rights of speech and privacy are liberally granted to all, but meaningfully granted only to the relatively privileged and propertied few with the economic wherewithal to transform those rights of privacy and speech into societal, cultural, and political power. Although Williams explicitly makes the case for both the utopian potential and the honorable history of the liberal rights traditions, the narratives that constitute the book's heart testify to the overwhelming damage done by rights to the "party of humanity" and hence ultimately undercut, rather than establish, the thesis that lends the book its title: that an alchemy of race and rights has lent to the rights tradition a life force and a noble history that it would otherwise not have had.

The response to this objection, I think, is that while it is of course *possible* to understand both slavery and contemporary private racism as an excess of rights, particularly of property and privacy rights given to the privileged, and while it is of course possible similarly to understand the gains for humanity effected by rights as doing little more than obfuscating very real, desperate, and imminently avoidable misery, the issue is not whether it is *possible* to understand our history in such a way, but whether it is *desirable* to do so. It is in answer to this question that Williams unequivocally says no — it is not desirable to do so, at least when viewed from the perspective of those citizens of this country who have been most profoundly deprived of rights, as well as most recently granted them. The greatest horror of *Dred Scott v. Sandford*,¹⁷ from the perspective of Scott, was emphatically not that Sandford had been granted "too many rights" — as though the evil of having a right of property in a human being is of a piece with the evil of having been granted too many rights to land, sea, air space, or privacy. The greatest horror of the *Dred Scott* decision from the perspective of Scott was rather that Scott had been granted none, and was accordingly treated as object rather than as subject, as property rather than as human. To view this as simply another example of an excess of property rights is to perpetuate the invisibility and hence the exclusion of Dred Scott himself, as well as the silencing of his voice and perspective. To shift to a modern example, the misery that is homelessness might of course be understood as an excess of property rights of the relatively privileged: we have the right to exclusive possession of our homes, as well as the "spill-over" property and privacy rights to

(1857), is just such an instance of excessive rights: the Court in that case went beyond the explicit language of the Constitution to grant the slave owner a substantive property right in the slave which could not be deprived even through the process of lawful congressional legislation — the earliest assertion of a "penumbral" substantive right. See ROBERT H. BORK, *THE TEMPTING OF AMERICA* 31 (1990).

17. 60 U.S. (19 How.) 393 (1857).

avert our eyes and our conscience and to keep our wallets and purses closed on the street. But to view the phenomenon of homelessness as an instance of excessive rights of the materially privileged is not only to keep the focus on ourselves and our moral strengths and weaknesses, but also to continue the invisibility of the homeless, the muting of their voice, and the importance of their perspective. The problem of homelessness from the perspective of the homeless is not simply that the privileged have too many rights to exclude them from their houses and hearts, but that the homeless have too few rights to meet their basic needs.

To shift the focus of rights discourse in the way that Williams advocates away from the problems that the critical legal studies movement identifies to the problems of rights-deprivation that critical race theory highlights achieves the pragmatic ends Williams explicitly notes,¹⁸ but also does two other things: it does the remedial work of giving voice to the perspective of the subordinated and silenced, rather than the excesses of the dominant and heard; and it aligns the entitlements of the excluded with the conception of humanity and community reflected in the rights held by the privileged. Recognition of rights, including the right to have one's needs met, implies an equality, a shared humanity, and a dignity that the critique of rights simply fails to comprehend. That equality and shared humanity is celebrated and insisted upon, not coopted, by use of the language of rights, in spite of the clear fact that rights, both historically and presently, have often served as vehicles of oppression and exclusion rather than as vehicles of liberation. Rights, however, have served and can serve as the vehicle by which community is enlarged and the individual protected and enriched. To insist that we neither turn our backs on this tradition nor abandon the utopian possibilities inherent in the use of rights is neither naive nor cooptive. It is, instead, both sensible and wise.

The second possible objection to Williams' work goes to method rather than substance: that the reliance on personal experience renders the argument irrefutable because nonfalsifiable, overly idiosyncratic, discomfitingly moralistic, nonuniversalizable, and for some combination of all of these reasons dismissable. Reliance on the evidence of personal experience and on inferences drawn from experience cannot be refuted or subjected to critique in standard analytic ways. Such reliance pits the author's moral character against not only that of the various persons criticized in the book as "spirit-murderers" but also against the reader's in a way that keeps the reader so constantly on the defensive (particularly where the reader is a law professor or student reading the book in anticipatory dread of seeing oneself or one's actions or words described in text or footnote) that the force of

18. Recognition of rights, not fulfillment of needs, has indeed been the currency of progress in this country. Pp. 151-53.

the author's argument for at least some readers is utterly lost. It provides an account of whatever is being explained that becomes so "personalized" that it can only be convincing to whomever has had just those experiences, namely the author, making the publication of the book redundant and unnecessary. Finally, simply as a matter of logic, it creates at best an argument that cannot be universalized, and hence cannot be rendered accessible to those audiences who have not shared in similar experiences.

The short but accurate response to all of these objections, I think, is that at least in Williams' book the reliance on personal experience is neither luxury nor dodge, but stark necessity. It is an integral and essential part of a complex description. When the voices, perspectives, and "personal experiences" of outsiders are systematically silenced, accounts of their being in the world, of their subjective experience of the world, of what happens and how they react to events and social interactions, of who they have become and hope to become are all lost. The societal pool of such testimony constitutes the acknowledged or unacknowledged, expressed or unexpressed, basis for objective claims about the nature of social reality, and it is accordingly perverted by the absence and systematic exclusion of the experiential accounts demonstrating the subjectivity of outsiders. The only corrective to that perversion, whatever the attendant risks, is the inclusion of just such personalized, subjective accounts as Williams has courageously and skillfully rendered. If we are to see the world accurately, we must listen to the voices of those who experience it in ways that we have not and will not, and we must listen in spite of the dangers of overpersonalization that such retellings invariably carry.

II. RACISM AS SPIRIT-MURDER

My own view is that the primary reason this book is important is not that it forces us to rethink disciplinary boundaries (although it does), or to rethink the concept, content, or potential of rights (although it does), or to rethink the distinction between objective and subjective, analysis and narrative (although it does), or to rethink the opposition of enlightenment and postmodern virtue (although it does), but rather that, if openly and honestly read, it changes and — at risk of cliché — raises the reader's consciousness of the extent to which private racism has permeated and perverted our personal lives and our social vision. It is because it challenges and changes our understanding of racism that this book, like so few others, is both enlightening and transformative. Williams undoubtedly gives the reader and listener reason to think and rethink, reason to examine and reexamine, and reason to cry, laugh, and hope. But more importantly, she gives her audience reason to change, and reason to act so as to change our world, so as to rid it and ourselves of spirit-murder, and to create in-

stead a more respectful as well as more loving democratic home. In the remainder of this review, I will simply try to explore the ways in which she does so, and to some extent schematize the conception of private racism and its harms that emerges from her account.

First, it is worth recalling by way of comparison, contrast, and context, that in the fifties and sixties, Martin Luther King, Jr., like Patricia Williams today, in attempting to explain to an unwilling audience the incomparable personal, spiritual, psychological, and moral injury of de jure segregation, also relied on myth and parable as well as social analysis and journalistic prose, and placed tremendous hope in the transformative potential of law, commerce, and rights for effecting meaningful social change. The shared reliance on personal narrative, however, may be the most telling line of continuity between the two writers. King told two stories in particular, the meaning of which, I think, is echoed in Williams' book.

The first such story involved an experience in a dining car on a train. On his return to Atlanta from a visit to a northern college, the college-aged King was seated at a table in the company of his fellow diners. As the train crossed into the South, King was abruptly separated from the white diners in the car with a curtain, so as not to cause the white diners offense or discomfort. In writing later about the experience, and in order to capture with precision the nature of the subjective harm occasioned by this casual imposition of the segregatory will of the state, King relied on a metaphor: "*I felt . . . as though*," he wrote, "*the curtain had dropped on my selfhood.*"¹⁹

King's second such story was about a conversation with his daughter, in which King had to explain to her that she could not attend a local carnival, as it was for whites only. Again, in later explaining the nature of the harm inflicted simply through the necessity of conveying this cruel information, King relied on a now famous metaphor. Such poisonous knowledge gave rise to both "clouds of inferiority" and "an unconscious bitterness" in the formative roots of his young child's personality.²⁰ In Williams' language, this segregatory act of spirit-murder poisoned both his daughter's self-regard and the regard with which she held her white co-citizens.

Williams' book gives content to King's skeletal metaphoric description of the harm to self occasioned by racism: What and who is the "self" hidden, split, obscured, and shadowed by the curtain, what precisely *is* the curtain that falls, why does it fall, and by what human agency? And what are the poisonous *contents* — as well as the source — of the clouds of inferiority, resentment, and bitterness that racism occasions in the individual self-image of its victims? The differences,

19. Quoted in STEPHEN B. OATES, *LET THE TRUMPET SOUND: THE LIFE OF MARTIN LUTHER KING, JR.* 17 (1982) (emphasis added).

20. MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 83 (1963).

of course, between Williams and King, and between Williams' project and King's, are readily apparent. First, while both Williams and King are orators and storytellers, Williams is primarily a writer and scholar, not a minister or activist, and consequently her analyses and descriptions are vastly more detailed and nuanced than King's metaphors. Further, while the writings of both are clearly influenced by legal and religious imagery, Williams' primary training is in law, while King's was in theology. Consequently, while Williams' primarily legal writings are enriched by religious allusions, King's primarily religious message is informed by legal allusions. Substantively, the difference is also stark, and important: the subject of Williams' analysis is not the *de jure*, state-ordered and maintained segregation that so deeply affected the young King's sense of self (as well as that of Patricia Williams' father (pp. 128-29)); rather, it is *private* racism and the law, not of race relations, but of contract, property, privacy, family, and commerce that surrounds, insulates, and justifies it.

Nevertheless, the similarities and bonds of continuity between the two are remarkably strong. Like King, Williams attempts to communicate the harm done by this country's continuing racist tradition; like King, she sees the only possible route to recovery as a personal and social transformation of consciousness that will replace the hatefulness of racism and poverty with a loving respect for others; and like King, she sees the law and legal system as both complicit in the perpetuation of racism and central to the creation of a world that has rid itself of it. Like King, Williams understands fully and describes powerfully both the potentially affirmative role of society, and the potent and damaging role of a racist society, in the creation or destruction — the nurturance or the murder — of the individual spirit, and like King, she self-consciously embraces a utopian conception of this country's most idealistic legal constructs in order, at least, to envision, as well as possibly promote, that societal revolution. Most tellingly, and in spite of the different forms of racism addressed by each, Williams, like King, locates the harm of racism in its attack on the self: the self's integrity, its reflective image, its feeling of worth, of integration, wholeness, and respect. We can see, then, in the metaphoric writings of King and Williams a description of the "spirit-murder" that is common to virtually all forms of racism, whether it be the state-sponsored *de jure* segregation of the Jim Crow era or the private and insulated racism of contemporary life. We can see, too, in each writer a self-defining desire to end it.

At the risk of imposing an overly rigid ordering on a style of writing that largely defies categorization, let me suggest that according to Williams' description, private racism, or spirit-murder — the disregard of those whose quality of life depends on our regard — has at least three possible manifestations in modern life. First, spirit-murder sometimes takes the form of a threatening and intentional personal

assault upon the person, self, self-image, safety, and worth of individual African Americans. Second, spirit-murder is an ongoing, continual, and pervasive societal devaluation of the privacy, needs, rights, desires, ambitions, contributions, lives, and worthiness of African Americans collectively. Third, spirit-murder is a continuing societal unwillingness to acknowledge the ongoing legacy of slavery, and in particular the ongoing prevalence of its core justificatory concepts of black will-lessness, sexual availability and hence rapeability, and objectification. In each of these dimensions, or forms — personal assault, devaluation of African Americans as a group, and the failure to acknowledge the legacy of the past — the act of spirit-murder carries with it distinctive injuries. Williams provides numerous examples of each form.

In her descriptions of spirit-murder in the form of personal assault, Williams, like King, relies on stories of common experiences attended with racism's unique and indeed incomparable harm. One of the first of many such stories involves a Christmas shopping trip:

[O]ne Saturday in 1986[,] I was shopping in Soho and saw in a store window a sweater that I wanted to buy for my mother. I pressed my round brown face to the window and my finger to the buzzer, seeking admittance. A narrow-eyed, white teenager wearing running shoes and feasting on bubble gum glared out, evaluating me for signs that would pit me against the limits of his social understanding. After about five seconds, he mouthed "We're closed," and blew pink rubber at me. It was two Saturdays before Christmas, at one o'clock in the afternoon; there were several white people in the store who appeared to be shopping for things for *their* mothers. [pp. 44-45]

Williams then explores the harm occasioned by this act of spirit-murder: the sense of disenfranchisement, rage, and humiliation of exclusion, whether public or private, state- or market-sanctioned:

I was enraged. At that moment I literally wanted to break all the windows of the store and *take* lots of sweaters for my mother. In the flicker of his judgmental gray eyes, that saleschild had transformed my brightly sentimental, joy-to-the-world, pre-Christmas spree to a shambles. He snuffed my sense of humanitarian catholicity, and there was nothing I could do to snuff his, without making a spectacle of myself.

I am still struck by the structure of power that drove me into such a blizzard of rage. There was almost nothing I could do, short of physically intruding upon him, that would humiliate him the way he humiliated me. No words, no gestures, no prejudices of my own would make a bit of difference to him; his refusal to let me into the store . . . was an outward manifestation of his never having let someone like me into the realm of his reality. He had no compassion, no remorse, no reference to me; and no desire to acknowledge me even at the estranged level of arm's length transactor. . . .

In this weird ontological imbalance, I realized that buying something in that store was like bestowing a gift, the gift of my commerce, the lucre

of my patronage. In the wake of my outrage, I wanted to take back the gift of appreciation that my peering in the window must have appeared to be. I wanted to take it back in the form of unappreciation, disrespect, defilement. I wanted to work so hard at wishing he could feel what I felt that he would never again mistake my hatred for some sort of plaintive wish to be included. I was quite willing to disenfranchise myself, in the heat of my need to revoke the flattery of my purchasing power. I was willing to boycott Benetton's, random white-owned businesses, and anyone who ever blew bubble gum in my face again. [pp. 45-46]

The violence of this assault and the harm it does is not limited to the incident or to the particular victim; the structure of power that precipitated it ensures that the longer-lasting pain of self-denial and self-hatred will be visited upon the group, and not simply upon the individual. In such a way every personal assault that is also a "spirit-murder" — that is fundamentally racist — carries with it the message and injury of devaluation and disregard of the group as well as of the individual:

The violence of my desire to burst into Benetton's is probably quite apparent. I often wonder if the violence, the exclusionary hatred, is equally apparent in the repeated public urgings that blacks understand the buzzer system by putting themselves into the shoes of white store-owners — that, in effect, blacks look into the mirror of frightened white faces for the reality of their undesirability; and that then blacks would "just as surely conclude that [they] would not let [themselves] in under similar circumstances." (That some blacks might agree merely shows that some of us have learned too well the lessons of privatized intimacies of self-hatred and rationalized away the fullness of our public, participatory selves.) [p. 46; footnote omitted]

In another example, Williams describes the pain inflicted by the disregard that is the essence of the assaultive act of spirit-murder as an "unresolved wound," again unresolved in part because of its privatization, its invisibility, its asymmetricality:

When my sister was in the fourth grade, she was the only black child in the class. One Valentine's Day, when the teacher went out of the room, all her white classmates ripped up the valentines she had sent them and dumped them on her desk. It was so traumatic that my sister couldn't speak again in that class, she refused to participate: so completely had they made her feel not part of that group. For a while she stopped performing altogether. Ultimately my mother convinced her that she could "show them" by outperforming them, but I think the joy of education for its own sake was seriously impaired, in both her and me (for I felt it almost as much as she did; we had made the valentines together).

Our roles repeatedly defined as "outsiders" in both cruel and unintentional ways, we were faced with a curious dilemma: we could continually try to be insiders, which would have been quite frustrating, because "insider" is not an act of will but a cooperative relation, . . . or we could resign ourselves to being outsiders. A few exceptionally strong people

... can just ignore it and carry on, despite the lack of that part of education which flows from full participation But most others become driven to transform the outsider status into its own excuse Either way the outsider status is a kind of unresolved wound, driven by pain, for after all that is the seeded prophecy contained in the word and the concept of those who are designated "outsider." [p. 89]

The unresolved wound sustained by individual assaults on the self becomes a generalized, rather than particularized, splitting and then hatred of the self, when the act of spirit-murder is in the form of a general devaluation of the interests, rights, needs, values, and worth of African Americans. In demonstrating the prevalence of this form of spirit-murder, Williams relies on full, detailed, and carefully nuanced retellings of a sizeable number of well publicized events: the mysterious story of still silent Tawana Brawley, and the unwillingness of whites to see (or care), even in the face of overwhelming evidence, that she was in some way terribly and unjustly injured (pp. 169-78); the Howard Beach incident and its aftermath, with the white establishment's constant incantations of the need for safety and neighborhood integrity to justify exclusion and devaluation (pp. 58-69); and the unnecessary and unjustifiable killing by police of Mrs. Eleanor Bumpurs, an elderly and severely incapacitated black woman using a kitchen knife to defend her leased premises against real and perceived demons (pp. 136-44).

In describing the unifying harm caused by the pervasive devaluation of which these publicized events are only the more violent and visible manifestations, Williams relies again on the evidence and integrity of an event drawn from her own life:

I had a friend in college who discovered, having lived her life as a red-haired, gray-eyed white person, that she was one-sixteenth black Before my eyes and despite herself, she began to externalize all the unconscious baggage that "black" bore for her, the self-hatred that racism is. She did not think of herself as a racist — nor had I — but she literally wanted to jump out of her skin, shed her flesh, start life over again. She confided that she felt fouled and betrayed. (She also asked me if I had ever felt this way. Her question dredged from some deep corner of my mind the recollection of feeling precisely that when, at the age of three or so, some white playmates explained that God had mixed mud with the pure clay of life in order to make me.)

....

... [T]he cultural domination of blacks by whites means that the black self is placed at a distance even from itself So blacks in a white society are conditioned from infancy to see in themselves only what others, who despise them, see.

....

In such an environment, relinquishing the power of individual ethical judgment to a collective ideal risks psychic violence, an obliteration of the self through domination by an all-powerful other. It is essential at

some stage that the self be permitted to retreat into itself and make its own decisions with self-love and self-confidence. What links child abuse, the mistreatment of women, and racism is the massive external intrusion into psyche that dominating powers impose to keep the self from ever fully seeing itself. Since the self's power resides in another, little faith is placed in the true self, in one's own experiential knowledge. It is thus that children's, women's, and blacks' power is actually reduced to the "intuitive" rather than to the real: social life is based primarily on the imaginary. [pp. 61-63; footnotes omitted]

The harms of devaluative spirit-murder are rarely, if ever, acknowledged, much less compensated by the dominant legal system, even where that system is responsive to the alleged harms of assaultive spirit-murder. Williams illustrates the point through a narrative retelling of the "Ujaama House incident" at Stanford University, in which a white student defaced a poster of Beethoven and hung the defaced poster in the dormitory of a black student who had insisted, in the face of considerable outrage by the white student, that Beethoven was partly black. The University found no injury to the black student involved, and accordingly recommended no disciplining of the white student. Williams' comments focus on the University's failure to see an injury:

The resolution of the Ujaama House incident rested on a definition of harm that was so circumscribed in scope as to conceal from any consideration — legal or otherwise — a range of serious but "extrinsic" harms felt by the decisionmakers to be either inconsistent with the first amendment or beside the point In limiting the investigation and remedy to Fred and Q.C. exclusively, the group harm . . . was avoided. To illustrate this point, I will try to recount my own sense of the Beethoven injury.

. . . .

The most deeply offending part of the Beethoven injury is its message that if I ever manage to create something as monumental as Beethoven's music, . . . then the best reward to which I can aspire is that I will be remembered as white. Perhaps my tribe will hold a candle in honor of my black heart over the generations — for blacks have been teaching white people that Beethoven was a mulatto for over a hundred years now — and they will be mocked when they try to make some claim to me. If they do press their point, the best they can hope for is that their tormenters will be absolved because it was a reasonable mistake to assume I was white: they just didn't know. But the issue is precisely the appropriation of knowledge, the authority of creating a canon, revising memory, declaring a boundary beyond which lies the "extrinsic" and beyond which ignorance is reasonably suffered. It is not only the individual and isolating fact of that ignorance; it is the violence of claiming in a way that denies theories of group rights and empowerment, of creating property that fragments collectivity and dehumanizes. [pp. 112-14]

Perhaps the most damaging form of spirit-murder, however, is that which is least likely to be rendered susceptible to legal recognition,

analysis, or compensation — the ongoing unwillingness of dominant white society to acknowledge the historical fact and injury of slavery, and the correlative ongoing ordeal for African Americans of living with that unacknowledged legacy. That history is both personal and societal, and Williams appropriately begins her book with the telling of her own personal tie to our slave past, and ends her book with an analysis of the societal implications of that history. The personal narrative Williams tells near the beginning of her diary is an attempt to capture the meaning and the pain of living with the knowledge of one's ancestral heritage — the incomprehensible duty of understanding and giving voice to the horror, terror, pain, and isolation occasioned by the lived experiences of rape, objectification, and isolation that constituted the daily life of one's enslaved ancestors. The story, surely the book's theoretic and emotional center, recurs as motif, metaphor and theme throughout the book's remainder:

A few years ago, I came into the possession of what may have been the contract of sale for my great-great-grandmother. It is a very simple but lawyerly document, describing her as "one female" and revealing her age as eleven; no price is specified, merely "value exchanged." My sister also found a county census record taken two years later; on a list of one Austin Miller's personal assets she appears again, as "slave, female" — thirteen years old now with an eight-month infant.

Since then I have tried to piece together what it must have been like to be my great-great-grandmother. She was purchased, according to matrilineal recounting, by a man who was extremely temperamental and quite wealthy. I try to imagine what it would have been like to have a discontented white man buy me, after a fight with his mother about prolonged bachelorhood. I wonder what it would have been like to have a thirty-five-year-old man own the secrets of my puberty, which he bought to prove himself sexually as well as to increase his livestock of slaves. I imagine trying to please, with the yearning of adolescence, a man who truly did not know I was human, whose entire belief system resolutely defined me as animal, chattel, talking cow. I wonder what it would have been like to have his child, pale-faced but also animal, before I turned thirteen. I try to envision being casually threatened with sale from time to time, teeth and buttocks bared to interested visitors.

. . . What could it have been like for my stunned, raped great-great-grandmother — an unwed teenage mother in today's parlance — so disliked and isolated from even her own children that the stories they purveyed were of her laziness? Her children were the exclusive property of their father (though that's not what they called him). They grew up in his house, taken from her as she had been taken from her mother. They became haughty, favored, frightened house servants who were raised playing with, caring for, and envying this now-married man's legitimate children, their half brothers and sister. Her children grew up reverent of and obedient to this white man — my great-great-grandfather — and his other children, to whom they were taught they owed the debt of their

survival. It was a mistake from which the Emancipation Proclamation never fully freed any of them.

Her children must have been something of an ultimate betrayal; it could not have been easy to see in them the hope of her own survival. . . .

Austin Miller . . . went on to become a judge; and the sons by his wife went on to become lawyers as well. There is no surviving record of what happened to my great-great-grandmother, no account of how or when she died.

. . . .

I see her shape and his hand in the vast networking of our society, and in the evils and oversights that plague our lives and laws. The control he had over her body. The force he was in her life, in the shape of my life today. The power he exercised in the choice to breed her or not. The choice to breed slaves in his image, to choose her mate and be that mate. In his attempt to own what no man can own, the habit of his power and the absence of her choice.

I look for her shape and his hand. [pp. 17-19]

Toward the end of the book, Williams describes the continuing societal impact of this as yet unacknowledged history, the undying beliefs held by whites regarding African-American "nature," and contrasts it with the view of human nature central to a bourgeois or market worldview:

[O]ne of the things passed on from slavery . . . is a belief structure rooted in a concept of black . . . antiwill, the antithetical embodiment of pure will. We live in a society where the closest equivalent of nobility is the display of unremittingly controlled willfulness. To be perceived as unremittingly without will is to be imbued with an almost lethal trait.

. . . .

In trying to describe the provisional aspect of slave law, I would choose words that revealed its structure as rooted in a concept of, again, black antiwill. I would characterize the treatment of blacks by whites in their law as defining blacks as those who had no will. . . .

Market theory always takes attention away from the full range of human potential in its pursuit of a divinely willed, rationally inspired, invisibly handed economic actor. Master-slave relations, however, took attention away from the full range of black human potential in a somewhat different way: it pursued a vision of blacks as simple-minded, strong bodied economic "actants." . . . [B]oth slave and bourgeois systems regarded certain attributes as important and disregarded certain others The experiential blinders of market actor and slaver go in different directions, yet the partializing ideologies of each makes the act of not-seeing an unsocializing, if unconscious, component of seeing. . . .

So it is important to undo whatever words obscure the fact that slave law was at least as fragmenting and fragmented as the bourgeois world view — and in a way that has persisted to this day As "pure will" signifies the whole bourgeois personality in the latter, so wisdom, control, and aesthetic beauty signify the whole white personality in the former. . . . The reconciling difference is that in slave law the emphasis is

really on the inverse rationale: that irrationality, lack of control, and ugliness signify the whole slave personality.

. . . . In my search for roots I must assume, not just as history but as an ongoing psychological force, that irrationality, lack of control, and ugliness signify not just the whole slave personality, not just the whole black personality, but me. [pp. 219-21; footnote omitted]

The injury occasioned by this most pervasive and lasting form of spirit-murder is nothing less than a personal, social, and psychic schizophrenia. Williams turns back to her own story to recount its personal dimension:

[J]ust before my first day of [law school], my mother said, in a voice full of secretive reassurance, "The Millers were lawyers, so you have it in your blood."

When my mother told me that I had nothing to fear in law school, that law was "in my blood," she meant it in a complex sense. First and foremost, she meant it defiantly; no one should make me feel inferior because someone else's father was a judge. She wanted me to reclaim that part of my heritage from which I had been disinherited, and she wanted me to use it as a source of strength and self-confidence. At the same time, she was asking me to claim a part of myself that was the dispossessor of another part of myself; she was asking me to deny that disenfranchised little-black-girl who felt powerless and vulnerable.

. . . .

I took this secret of my blood into the Harvard milieu with both the pride and the shame with which my mother had passed it along to me. I found myself in the situation described by Marguerite Duras in her novel *The Lover*: "We're united in a fundamental shame at having to live. It's here we are at the heart of our common fate, the fact that [we] are our mother's children, the children of a candid creature murdered by society. We're on the side of society which has reduced her to despair. Because of what's been done to our mother, so amiable, so trusting, we hate life, we hate ourselves."

Reclaiming that from which one has been disinherited is a good thing. Self-possession in the full sense of that expression is the companion to self-knowledge. Yet claiming for myself a heritage the weft of whose genesis is my own disinheritance is a profoundly troubling paradox. [pp. 216-17; footnote omitted]

The psychic dimension of this "profoundly troubling paradox" that Williams powerfully describes is the true measure of the harm to the integrity, coherence, integration and safety of self and spirit occasioned by spirit-murder. That harm is eventually captured, I think, toward the end of the book, in what might be the diary's most frightening metaphor: the recurrent imagined presence of powerful, unthinking, lethal polar bears. Those bears, like the cultural memory and legacy of racism, are at once both real and imagined, at once a part of oneself and a part of one's world. They are a marker of "where one has been" and a harbinger of one's imminent destruction:

I sleep fitfully in the New Orleans humidity. . . . Suddenly, from

somewhere deep in my psyche, polar bears rise. . . . They hunch and settle and listen, from beyond-language.

I wake up in a cold sweat.

I wake up. Yet large eyes still gleam inquiringly from the foot of the bed. The eyes at the foot of the bed are larger than flashlights. They are polar-bear eyes. I am terrified.

(Why am I so terrified? Some part of me knows that it is intelligent for me to be schizophrenic. It is wise, in a way, for me to be constantly watching myself, to feel simultaneously more than one thing, and to hear a lot of voices in my head: in fact, it is not just intelligent but fashionable, feminist, and even postmodern. It is also wise, I know, to maintain some consciousness of where I am when I am other than the voice itself. . . . It gets confusing sometimes, so I leave markers of where I've been This season, those spots are marked with polar bears.)

I am afraid of their claws and their silence and the accusation in their eyes, the mystery contained in their strong sharp teeth. I am afraid of their smell above all; the meat and blood on their breath, the stiffness of their matted fur, the soft grainy pads of the soles of their feet. They smell of even-tempered desperation, of the last resort of pure survival. They come to me in the middle of the night, disguised as insanity itself; they hunch at the foot of my bed, large and cold, warm-hearted and curious. I can taste their meat, the fresh-sliced scent of lung and liver, of still-warm divinations of palpitating heart.

But since I know they are nothing more than, as I have said, markers of where I've been, I get up the courage to calm myself, and settle in for the vision that their presence will have brought. [pp. 207-08]

CONCLUSION: OF COMMERCE AND RIGHTS

What might be the legal description, and what might be the legal prescription, of the private racism, or spirit-murder, that Williams depicts? Williams explores this question within two central legal constructs. On the one hand, the legal relation at the core of spirit-murder is that of being an "object of property" — true in the most literal sense of the slave relation, but true, in similarly harmful ways, of the objectification that is the premise of modern spirit-murder as well. Understood in this way, spirit-murder is the injury to self, spirit, and humanity occasioned through the grotesque abuse of the methods of property, contract, and commercial law upon the objects of property, contract, and commerce. Understanding and recognizing spirit-murder as a real harm, with real and tragic costs, opens the door to a powerful critique of commerce and property. All we need do is examine the law of the transaction from the perspective of its object, and not from the perspective of its subject. Again, Williams provides numerous examples:

This particular morning I'm sitting up in bed reading about redhibitory vices. A redhibitory vice is a defect in merchandise which, if existing at the time of purchase, gives rise to a claim allowing the buyer to return

the thing and to get back part or all of the purchase price. The case I'm reading is an 1835 decision from Louisiana, involving the redhibitory vice of craziness:

The plaintiff alleged that he purchased of the defendant a slave named Kate, for which he paid \$500, and in two or three days after it was discovered the slave was crazy, and run away, and that the vices were known to the defendant . . .

It was contended [by the seller] that Kate was not crazy but only stupid, and stupidity is not madness; but on the contrary, an apparent defect, against which the defendant did not warrant . . .

The code has declared, that a sale may be avoided on account of any vice or defect, which renders the thing either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed the buyer would not have purchased with acknowledge of the vice. We are satisfied that the slave in question was wholly, and perhaps worse than, useless.

. . . [Y]ou should know that you are dealing with someone who is writing this in an old terry bathrobe with a little fringe of blue and white tassels dangling from the hem, trying to decide if she is stupid or crazy. [pp. 3-4; footnote omitted]

In a later chapter, Williams explores other objects of property, again with an emphasis on the injury to the object, rather than on their possession by the subject:

It is early on a weekday afternoon. I sit at home watching a PBS children's program A woman with a smarmy talking-down-for-children voice is conducting an interview of Frank Perdue at his chicken farm. The camera is panning the "plant room" where 250,000 chicks have hatched, all only a few hours old. They are placed on a long assembly line, packed on so that the black conveyor belt is yellow with densely piled chicks; human hands reach out at high speed and inoculate each fuzzy chick by slamming it against an inoculator and throwing it back on the line. At the end of that line is a chute — and a shot of chicks scrambling for footing as they are dumped from a height onto yet another assembly line. Cute, catchy, upbeat music accompanies their tumbling, a children's song for the hurtling chicks. [pp. 181-82]

If spirit-murder is the harm inflicted upon the object of property, then it would be logical to assume that one remedy for spirit-murder would be inclusion in the subjectivity, rather than objectivity, of commerce. Indeed, a sizeable number of the most significant events described in this book occur in or around clothing stores — Williams, always attentive to the importance of phenomenological, subjective, experiential accounts, makes clear to the reader that she "loves to shop," and finds the participation in the exchanges of commerce quite delicious in deep as well as superficial ways. Reflecting and embodying a history of objectification by, and then exclusion from, and finally

tentative and often grudging inclusion in, the realm of contract, property, and commerce, Williams describes her feelings about her formal relation to "the shopowner," and the potential for human interaction he represents:

Although I was quite young, I remember the Woolworth sit-ins; I remember my father walking trepidatiously into stores in Savannah, Georgia, shortly after desegregation, cautiously disbelieving of his right to be there, disproportionately grateful for the allowance just to be. Very much my father's daughter, I am always grateful when storekeepers are polite to me; I don't expect courtesy, I value it in a way that resembles love and trust and shelter. [pp. 128-29]

The commercial transaction, for centuries a forbidden interaction, thus becomes a potential occasion for self-assertion and for demanding respect from the other. Thus, Williams refers back to her cultural and ancestral history to contrast her own attraction to formal lease arrangements with the preference of a white friend for informality:

I was raised to be acutely conscious of the likelihood that no matter what degree of professional I am, people will greet and dismiss my black femaleness as unreliable, untrustworthy, hostile, angry, powerless, irrational, and probably destitute. Futility and despair are very real parts of my response. So it helps me to clarify boundary; to show that I can speak the language of lease is my way of enhancing trust of me in my business affairs. As black, I have been given by this society a strong sense of myself as already too familiar, personal, subordinate to white people. I am still evolving from being treated as three-fifths of a human, a subpart of the white estate. I grew up in a neighborhood where landlords would not sign leases with their poor black tenants, and demanded that rent be paid in cash; although superficially resembling Peter's transaction, such informality in most white-on-black situations signals distrust, not trust. Unlike Peter, I am still engaged in a struggle to set up transactions at arm's length, as legitimately commercial, and to portray myself as a bargainer of separate worth, distinct power, sufficient *rights* to manipulate commerce.

... For me, ... the lack of formal relation to the other would leave me estranged. It would risk a figurative isolation from that creative commerce by which I may be recognized as whole, by which I may feed and clothe and shelter myself, by which I may be seen as equal — even if I am stranger. For me, stranger-stranger relations are better than stranger-chattel. [pp. 147-48]

Commerce and contract, however, are ultimately not a full solution to the injuries of spirit-murder, and the first third of Williams' book is an account of her ambivalence toward them. While exclusion from commerce unquestionably is one form of spirit-murder, commerce itself is a form of spirit-murder. Thus, although the discussions in the first few chapters are often sparked by race, they are, for the most part, explorations of the harms visited upon humanity by an overly commercialized, commodified social structure — from the homelessness and poverty that is its constant, if not inevitable com-

panion (pp. 15-43), the legitimization of horrific infliction of pain, abuse, and authority through the magical incantation of the victim's "consent" (pp. 32-34), and the commodification of virtually all aspects of our lives and culture (pp. 29-32), to the peculiarly parental relation established between contract and contractor, by which the contractor's later passivity is what is ultimately promised in the initial act of will (pp. 224-26). Although the criticisms of commercialism and contract here are familiar, Williams' narrative and conceptual treatment of them as a form of "spirit-murder" in fact continuous with the spirit-murder occasioned by its opposite — the exclusion from commerce — is both subtle and powerful.

The heart of her ambivalence, though, to inclusion in commerce as a possible remedy for spirit-murder stems from her own history of race-based exclusion, and, hence, her awareness of the potential for exclusion from the flow of commerce itself. The cultural history and memory of race-based exclusion from the subjectivity of the commercial relation has left as its legacy to modern African Americans a relationship not of "trust, love and shelter" between customer and shopowner, although Williams at times misleadingly experiences it as such, but rather of an overgratitude steeped in fear and trepidation:

I know that this valuing [of the shopkeeper's politeness] is a form of fear. I am afraid of being alien and suspect, of being thrown out at any moment; I am relieved when I am not. At the same time, I am enraged by the possibility of this subsurface drama-waiting-to-happen. My rage feels dangerous, full of physical violence, like something that will get me arrested. . . . All this impermissible danger floats around in me, boiling, exhausting. I can't kill and I can't teach everyone. I can't pretend it doesn't bother me; it eats me alive. So I protect myself. I don't venture into the market very often. I don't deal with other people if I can help it. I don't risk exposing myself to the rage that will get me arrested. The dilemma — and the distance between the "I" on this side of the store and the me that is "them" on the other side of the store — is marked by an emptiness in myself. Frequently such emptiness is reiterated by a hole in language, a gap in the law, or a chasm of fear. [p. 129]

A second way of describing the legal relation that results in the harm of spirit-murder, which borrows from the language of constitutional law rather than commercial law, is in terms of rights: spirit-murder so understood is the harm visited upon one who lives in the excluded territory of "rights-less-ness." In her now classic defense of rights, Williams squarely attributes to this history of rights-less-ness the contrast between the civil rights community's adherence to the transformative potential of rights with the white left's skeptical critique:

Another way of describing the dissonance between blacks and CLS is in terms of the degree of moral utopianism with which blacks regard rights. For blacks, the prospect of attaining full rights under law has

been a fiercely motivational, almost religious, source of hope ever since arrival on these shores.

. . . [W]here one's experience is rooted not just in a sense of illegitimacy but in *being* illegitimate, in being raped, and in the fear of being murdered, then the black adherence to a scheme of both positive and negative rights — to the self, to the sanctity of one's own personal boundaries — makes sense. [p. 154]

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To say that blacks never fully believed in rights is true. Yet it is also true that blacks believed in them so much and so hard that we gave them life where there was none before; we held onto them, put the hope of them into our wombs, mothered them and not the notion of them. And this was not the dry process of reification, from which life is drained and reality fades as the cement of conceptual determinism hardens round — but its opposite. This was the resurrection of life from ashes four hundred years old. The making of something out of nothing took immense alchemical fire — the fusion of a whole nation and the kindling of several generations. [p. 163; footnote omitted]

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[T]he recursive insistence of those rights is . . . also defined by black desire for them — desire fueled not by the sop of minor enforcement of major statutory schemes like the Civil Rights Act, but by knowledge of, and generations of existing in, a world without any meaningful boundaries — and “without boundary” for blacks has meant not untrammelled vistas of possibility but the crushing weight of total — bodily and spiritual — *intrusion*. “Rights” feels new in the mouths of most black people. It is still deliciously empowering to say. It is the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power. The concept of rights, both positive and negative, is the marker of our citizenship, our relation to others. [p. 164]

The challenge, then, as Williams sees it, is to establish a generous system of rights that grants entitlements to the integrity of self, to the animation of life, a guarantee of inclusion and respect for boundaries, but without granting a right to commit spirit-murder in any of its manifestations — to grant rights without the right to objectify, to assault, to devalue and disregard, or to turn the force of life into the object of property. Put affirmatively, we must grant rights but not restrict rights, we must not objectify by refusing rights to some but not to others. Williams thus reverses the central thrust of the “rights critique,” by describing the country's history of brutality as one of a failure of rights commitment, rather than an excess of rights assertion:

This country's worst historical moments have not been attributable to rights *assertion* but to a failure of rights commitment. From this perspective, the problem with rights discourse is not that the discourse is itself constricting but that it exists in a constricted referential universe. The body of private laws epitomized by contract, including slave contract, is problematic because it denies the object of contract any rights at all. [p. 159]

Finally, she moves from this reversal to an articulation of her own utopian conception of the possibilities for social reform imminent, but unrealized, in our rights tradition:

The task, . . . then, is not to discard rights but to see through or past them so that they reflect a larger definition of privacy and property: so that privacy is turned from exclusion based on self-regard into regard for another's fragile, mysterious autonomy; and so that property regains its ancient connotation of being a reflection of the universal self. The task is to expand private property rights into a conception of civil rights, into the right to expect civility from others. In discarding rights altogether, one discards a symbol too deeply enmeshed in the psyche of the oppressed to lose without trauma and much resistance. Instead, society must *give* them away. Unlock them from reification by giving them to slaves. Give them to trees. Give them to cows. Give them to history. Give them to rivers and rocks. Give to all of society's objects and untouchables the rights of privacy, integrity, and self-assertion; give them distance and respect. Flood them with the animating spirit that rights mythology fires in this country's most oppressed psyches, and wash away the shrouds of inanimate-object status, so that we may say not that we own gold but that a luminous golden spirit owns us. [pp. 164-65]

There is a considerable distance between our present liberal conception of rights and the utopian conception toward which Williams urges us to aspire. A conception of rights freed of the right to objectify, to murder the spirit, to refuse to regard those whose lives depend upon our regard, would require not just the liberation of the object from the enslavement of property, but a transformation of property law itself, and a transformation of the property-owning self that is its subject. Williams' account of rights is ultimately, then, not in any sense whatsoever a defense of extant liberal rights; rather, it is a utopian vision of a possible social future that builds upon but insists we move beyond particular historical moments of relative nobility. Like the civil rights movement that it celebrates, Williams' understanding of rights, and her faith in their potential for ameliorating the injuries of racism, is ultimately anchored neither in a misguided complacency with present rights discourse, nor in a resigned or bitter discontent, but in a realistic assessment of law, a hope for and love of community, and a hard-won, fragile self-regard, all borne of struggle. The gift of this book is simply its insistence on the ever-present possibility of just that transformative alchemy.